Fair Work Commission

Compliance update: Are you using your credit cards appropriately?

The regulator has dealt with numerous complaints about credit card use – many of them as a result of whistleblower disclosures. This compliance update will help you understand the common risks and issues surrounding credit card use, and what you can do about them.

Good financial governance is essential to ensuring that registered organisations act in the best interests of members. Organisations and branches can take steps to protect themselves against risk through the enforcement of internal policies that govern expenditure and credit card use and ensuring that day-to-day practices are consistent with these.

It's not just about credit card misuse

The use of a credit card is likely to be considered a 'financial affair' under section 271 of the RO Act. If your branch uses a credit card it probably will not be eligible for a section 271 financial reporting exemption.

The *Fair Work (Registered Organisations) Act 2009* (the RO Act) states that the rules of organisations must require the organisation and its branches to develop and implement policies relating to the expenditure. This includes the proper use of credit cards.

Officers and employees have duties in relation to the financial management of their organisations, including to ensure funds are only used for a proper purpose. The regulator has conducted inquiries and investigations that have revealed conduct below the expected standard of behaviour. Issues relating to the management of organisations' funds, policies, record-keeping and accountability have been identified.

What can registered organisations and branches do right now?

The Fair Work Commission recommends registered organisations and branches review their financial governance frameworks regularly. This includes current rules, policies and procedures to ensure financial management duties are carried out in the best interests of members.

A strong governance framework describes everyone's responsibilities and can prevent credit card misuse and hold people to account in circumstances where compliance issues arise.

Good governance tip: Create a 'speak up' culture

Organisations with a 'speak up' culture empower officers and employees to report misconduct directly to them. It can help senior management to resolve minor internal issues before they evolve into non-compliance issues.

Listen to our podcast about the benefits of a speak up culture, and to find out more about how to develop one.

We've included some examples below of the types of issues that have been reported to us and the important lessons we think organisations can learn from them when drafting policy.

Examples of whistleblower disclosures received under the RO Act

Disclosure	Potential breaches and issues
A whistleblower reported a registered organisation failed to implement its expenditure policy in practice. The policy strictly prohibited using the organisation's credit card for any personal purposes.	Potential breaches by the individual of: • the internal policies of the organisation and rules related to financial management;

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They alleged that: • when an officer used a credit card for personal use, they were simply asked to pay the money back, with no other consequences; • credit card statements were taken at 'face value' (i.e. no checking was ever done, leaving it to the individual to highlight their own breaches of the policy); and • no receipts were requested to be produced even though a policy required them to be.	• officers' duties under section 285 ('care and diligence'), section 286 ('good faith and proper purpose') and section 287 ('not to misuse position'). Credit card expenditure should be acquitted each month against invoices and approved by another senior officer. This includes taking appropriate disciplinary steps when credit cards have been used improperly. A failure to have or implement good governance practices could be a breach of duty by the committee of management. This also raises reputational issues for the organisation and the people involved.
We were told that expenditure by senior officers in a branch of a registered organisation was either not checked or not questioned by finance staff. It was also alleged that the expenditure policy was inconsistently applied among members of the committee of management (i.e. some were treated more leniently than others).	Potential breaches of: • the internal policies of the branch • duties under section 285, section 286 and section 287. Credit card policies must be applied equally to senior officers who will be held to a higher standard of care because of the senior positions they hold. This also raises reputational issues of the organisation and the people involved.

A reporting unit held an exemption certificate under section 271 on the basis that it had declared it did not have any financial affairs. A whistleblower told us that branches were allocated an annual budget by the organisation's federal office. Each branch had a credit card and could arrange its internal financial affairs and choose what to use the credit card for within a budget.	A credit card that is controlled or operated by a branch officer is likely to constitute a 'financial affair' under section 271. Therefore, exemptions from the reporting requirements should not have been sought or granted. While the credit card was not used for personal purposes, it made the branch ineligible for a section 271 exemption because it couldn't legitimately claim to have had no financial affairs.

Suggestions of financial controls to manage credit card use include:

- **comprehensive expenditure policies** to regulate, monitor and place limits on how credit cards are used. Record-keeping and timely reconciliation procedures (including the checking of transactions) are essential to limiting expenditure to a work-related purpose. Appropriate delegation levels must be enforced.
- **review the practices** of your organisation – they should align with your policies and rules. If policies are not followed in practice, consider how this can be achieved, including whether officers and employees have adequate access to them, and how education and enforcement can influence a compliance culture
- **avoid ambiguity** in your rules and policy documents. Look at providing specifics (including dollar limits) to overcome broad discrepancies in personal views about what is allowed and what constitutes 'reasonable' in the circumstances
- **ensure sufficient oversight**. Officers should not be authorised to sign off on their own expenditure. In small branches where there is a single paid officer, expenditure can be overseen by a group of people (for example the branch executive)
- **establish internal procedures** to help officers and employees comply with policy. A form or template document can create consistency, accuracy, and promote detailed record-keeping
- **be clear** about how credit cards impact your financial reporting obligations.

Case study: Lee the Branch Secretary

Lee is elected as the NSW Branch Secretary in a registered organisation. As part of her induction Lee is given access to the branch's policy and procedures manual, which includes a copy of expenditure and travel policies.

She completes financial governance training under section 293K of the RO Act immediately after taking office.

Next month Lee is scheduled to attend a work conference in Adelaide. She is pleased about the timing of the conference because she is invited to a wedding in the Barossa Valley the day following the conference.

Lee considers the policy and procedures manual before making travel arrangements. The expenditure policy strictly prohibits the use of branch funds for personal benefit. Lee uses a corporate credit card to pay for the work-related expenses of her trip, including return flights to Adelaide, accommodation in Adelaide and the conference ticket. She uses her personal credit card to pay for expenses that are unrelated to work, including meals, travel and accommodation in the Barossa Valley.

In accordance with policy, Lee keeps receipts of her work-related expenses to assist with the monthly reconciliation of her spending.

Important lessons for organisations and branches when creating policy

Credit cards belonging to the organisation should only be used for business purposes.

Several complaints to the regulator have raised concerns about the expenditure of organisations' funds for personal benefit. There must be clear separation between spending for personal purposes and the use of a corporate credit card.

To determine whether an expense is for a business use you should consider:

- the precise nature of the item or service that has been purchased. Check whether it has been accurately recorded, or if it has been characterised under a generic label such as 'purchase', 'expense' or 'travel' which doesn't provide enough detail
- the rules of the registered organisation, including the objectives of the organisation or branch, and the powers and functions of officeholders (including any limits placed on them)
- other records such as work diaries, which may confirm the officer or employee's schedule, describe the particulars about any meetings (including the purpose and who was present), and related travel
- whether an expense that is for a business purpose is reasonable. Expenditure policies should specify dollar amounts instead of using general terms like 'reasonable'. For example, 'an officer can spend up to $50 for dinner on a work trip.'

There should be no inconsistencies within a registered organisation's policies.

During investigations of whistleblower disclosures, the regulator has identified examples where organisations have policies in place that strictly prohibit personal use of credit cards, but in practice they simply require a card holder who has made personal transactions to repay the amount without any other consequence for their misuse. In some cases, repayment hasn't even been required.

The absence of a sanction exposes organisations to deliberate or careless transactions that are not for business purposes. Not properly applying financial rules and policies can also indicate that officers on the committee of management are not fulfilling their duties of care and diligence under section 285 of the RO Act, which is a civil penalty provision.

Relevant cases

Below are some examples of cases which involved financial misconduct in registered organisations, including links to the judgments.

- Health Services Union v Jackson (No 4) [2015] FCA 865
- General Manager of the Fair Work Commission v Thomson (No 3) [2015] FCA 1001 (liability); and (No 4) [2015] FCA 1433 (penalty)
- General Manager of Fair Work Australia v Health Services Union and Others [2014] FCA 970

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- Registered Organisations Commissioner v Mijatov [2018] FCA 939

You can read plain language summaries of cases on our website.

For further information about this compliance update please contact the Fair Work Commission at regorgs@fwc.gov.au or call us on 1300 341 665.